

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

BARAONA, *et al.*,

Defendants.

Case No. 1:21-cv-01448-ADA-BAM (PC)

ORDER DENYING PLAINTIFF'S MOTION
TO COMPEL AS MOOT
(ECF No. 62)

ORDER EXTENDING DEADLINE FOR
PLAINTIFF TO FILE MOTION TO
SUBSTITUTE AND PROPOSED SECOND
AMENDED COMPLAINT WITH
INFORMATION IDENTIFYING DOE
DEFENDANTS

Defendants' Discovery Responses Due: **March
3, 2023**

Plaintiff's Proposed Second Amended
Complaint Due: **March 31, 2023**

Plaintiff Durrell Anthony Puckett ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's first amended complaint against: (1) Defendants A. Baraona, R. Burnitzki,¹ R. Leos, H. Hernandez, E. Diaz, and Doe 1 for excessive force in violation of the Eighth Amendment; and (3) Defendants A. Ruiz, R. Martinez, E. Ruiz, G. Meier,² R. Gutierrez, J. Cruz, K. Allison (Cronister), and Jane Doe Nurse for failure to protect in violation of the Eighth Amendment.

¹ Erroneously sued as "Burneszki."

² Erroneous sued as "Meiers."

Following multiple extensions of time, the deadline for Plaintiff to submit a proposed second amended complaint identifying the Doe Defendants, and the deadline for motions to amend pleadings (solely for the purpose of Plaintiff's proposed second amended complaint identifying the Doe Defendants) is currently February 10, 2023. (*See* ECF No. 59.)

On January 19, 2023, Plaintiff filed a motion to compel. (ECF No. 62.) The Court issued an order directing the parties to meet and confer regarding the discovery dispute, and to file a joint statement following the parties' conference. The Court further stayed briefing on Plaintiff's motion to compel pending the outcome of the parties' meet and confer. (ECF No. 63.)

II. Plaintiff's Motion to Compel

Currently before the Court is the parties' joint statement, electronically signed by counsel for Defendants and with an authorized electronic signature by Plaintiff, indicating that the discovery dispute was resolved following the parties' meet-and-confer telephone call on February 2, 2023. (ECF No. 64.) The parties indicate that defense counsel agreed to provide Plaintiff with the first initials and last names of the escort officers who worked the day before the incident, the first initial of an escort officer named Ramirez who worked the day of the incident, and the first initial and last name of the nurse who worked on the upper tier on the day of the incident. With that agreement, the parties believe that all issues in Plaintiff's motion to compel have been resolved and there is no need for Court intervention at this time. (*Id.*)

The Court appreciates the parties' efforts and willingness to resolve this discovery dispute without further briefing on the motion to compel. As it appears the discovery dispute will soon be fully resolved, Plaintiff's motion to compel is denied as moot. Though the parties did not identify a deadline by which Defendants will serve discovery responses on Plaintiff, the Court finds it appropriate to set a deadline for such disclosures. Further, as it appears the discovery responses may provide information Plaintiff requires to identify the remaining Doe Defendants, the Court will grant Plaintiff additional time to file his proposed second amended complaint.

III. Order

Based on the foregoing, IT IS HEREBY ORDERED as follows:

1. Plaintiff's motion to compel, (ECF No. 62), is DENIED as moot;

2. Defendants shall serve the requested discovery responses, as identified in the parties' joint status report, on Plaintiff on or before **March 3, 2023**;
3. The deadline for filing motions to amend, only for the purposes of submitting a proposed second amended complaint identifying the Doe Defendants, is extended to **March 31, 2023**;
4. On or before **March 31, 2023**, Plaintiff shall file a motion to substitute the identities of Defendants Doe 1 and Jane Doe Nurse that provides the Court with enough information to locate them for service of process, together with a proposed second amended complaint substituting the names of Defendants Doe 1 and Jane Doe Nurse; and
5. **Plaintiff's failure to comply with this order will result in the dismissal of any unidentified defendant(s) from this action, without prejudice, for failure to serve with process pursuant to Federal Rule of Civil Procedure 4(m).**

IT IS SO ORDERED.

Dated: **February 10, 2023**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE